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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 JESUS CUETO-GARCIA,

15 Defendant.

CASE NO. 07cr2521 WQH

ORDER

16 Hayes, Judge:

17 The matter before the Court is Defendant's Motion to Suppress Evidence and
18 Statements (#19).

19 **FACTS**

20 On August 26, 2007 at around 4:45 p.m., United States Border Patrol Agent Steven
21 Marosi responded to a radio report of a dark colored sport utility vehicle driving on Bear
22 Valley Road. Bear Valley Road is located approximately ten miles east of Tecate and twelve
23 miles north of the border. Bear Valley Road circumvents the Highway 80 westbound
24 checkpoint and is known to Agent Marosi to be used by smugglers.

25 Around 5:10 p.m., Agent Marosi saw a grey Chevy Trailblazer leave the northern Bear
26 Valley Road gate. This area is generally closed to civilian traffic and limited to park service
27 rangers and California Department of Forestry and Fire Protection. The gate should be locked
28 at all times to regular traffic but was open on this occasion. Agent Marosi called in to dispatch

1 to check the license plate of the Chevy Trailblazer. Agent Marosi received the report that the
2 vehicle was not reported stolen and that the vehicle was registered to a company in the Los
3 Angeles area.

4 Agent Marosi called for backup and stopped the vehicle because the vehicle was driving
5 in an area closed to civilian traffic and frequently used to circumvent a border patrol
6 checkpoint. Agent Marosi questioned the driver and the passenger (the defendant in this case)
7 about their immigration status. The driver admitted that he was a Mexican citizen without
8 permission to enter the United States and was placed under arrest. Defendant told Agent
9 Marosi that he and the driver were sightseeing in the mountains. Agent Marosi noticed a black
10 blanket covering people in the back area of the vehicle. Seven individuals were found in the
11 back of the vehicle and admitted they were Mexican citizens without documents to enter the
12 U.S. legally.

13 At the station, agents discovered the Defendant's criminal and immigration history and
14 read him his *Miranda* rights. Defendant requested an attorney and questioning ceased.

15 On September 12, 2007, the grand jury returned an indictment against the Defendant
16 charging that he is an alien, who previously had been excluded, deported and removed from
17 the United States to Mexico found in the United States without permission to reenter in
18 violation of 8 U.S.C. Section 1326 (a) and (b).

19 CONTENTIONS OF PARTIES

20 Defendant moves to suppress statements and evidence on the grounds that the vehicle
21 stop was illegal. Defendant contends that Agent Marosi lacked specific articulable facts to
22 form a reasonable suspicion to stop the vehicle in which he was a passenger. Defendant
23 contends that all evidence derived from the illegal stop should be suppressed.

24 The Government contends that the circumstances of the stop along with Agent Marosi's
25 training and experience lead him to a reasonable suspicion that the vehicle may have contained
26 illegal immigrants. The Government further contends that the identity of the Defendant is not
27 suppressible as fruit of the poisonous tree even if the stop was not legal.


28 RULING OF THE COURT

1 Border patrol agents have the authority to stop automobiles in areas near the Mexican
2 border to question the occupants about their citizenship and immigration status upon
3 “reasonable suspicion.” *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 882 (1975). “Any number of
4 factors may be taken into account in deciding whether there is reasonable suspicion to stop a
5 car in the border area. Officers may consider the characteristics of the area in which they
6 encounter a vehicle. Its proximity to the border, the usual patterns of traffic on a particular
7 road, and previous experience with alien traffic are all relevant. . . . They may also consider
8 information about recent illegal border crossing in the area. The driver’s behavior may be
9 relevant. . . Aspects of the vehicle itself may justify suspicion.” 422 U.S. at 885.

10 In this case, the vehicle was within close proximity to the border in an area known to
11 the government agent be used to avoid a border checkpoint. The vehicle was exiting from an
12 area closed to civilian traffic and the vehicle was large enough to conceal aliens. The Court
13 concludes that these circumstances along with Agent Marosi’s training and experience lead
14 him to a reasonable suspicion that the vehicle may contain illegal immigrants. The Court
15 concludes that the stop was legal. Even if the stop was not legal, the Defendant is not entitled
16 to suppression of his identity learned in connection with an illegal stop. *See United States v.*
17 *Garcia-Beltran*, 443 F.3d 1126 (9th Cir. 2005); *See also United States v. Guzman-Bruno*, 27
18 F.3d 420, 421 (9th Cir. 1994)(“A defendant’s identity need not be suppressed merely because
19 it is discovered as the result of an illegal arrest or search. There is no sanction to be applied
20 when an illegal arrest only leads to discovery of a man’s identity.”).

21 IT IS HEREBY ORDERED that Defendant’s Motion to Suppress Evidence and
22 Statements (#19) is denied.

23 DATED: June 4, 2008

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25 **WILLIAM Q. HAYES**
26 United States District Judge
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